

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

March 10, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-2335

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT III

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**NOR-LAKE, INC.,**

**PLAINTIFF-APPELLANT,**

**v.**

**WISCONSIN DEPARTMENT OF NATURAL  
RESOURCES,**

**DEFENDANT-RESPONDENT.**

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APPEAL from an order of the circuit court for St. Croix County:  
SCOTT R. NEEDHAM, Judge. *Reversed and cause remanded.*

Before Cane, P.J., Myse and Hoover, JJ.

HOOVER, J. Nor-Lake, Inc., appeals an order vacating a judgment based on a stipulation it entered with the Department of Natural Resources regarding testing private water wells. Nor-Lake argues, and the DNR concedes, that the court erred by refusing to interpret its own judgment on the mistaken

conclusion that it lacked authority to interpret or enforce the judgment resolving a dispute under ch. 227, STATS. We agree that the court erred. We further conclude that the stipulation unambiguously requires Nor-Lake to test the wells in question and, therefore, reverse and remand for entry of an order consistent with the stipulation.

On October 27, 1994, the DNR issued an administrative order to Nor-Lake directing it to investigate and respond to contamination in a subdivision known as TroutBrook Road/Green Mill Lane. Nor-Lake filed a petition for judicial review of the order under ch. 227, STATS. Prior to filing any briefs on either side, the parties entered into negotiations and asked the court to stay judicial proceedings. The parties later entered into a stipulation for an order for judgment. Under the terms of the stipulation, the DNR withdrew the October 1994 administrative order. The stipulation resolved the disputed matters and constituted the complete agreement between the parties. The court entered an order for judgment and judgment based upon the stipulation.

The parties' agreement set forth specific terms for groundwater sampling to be conducted by Nor-Lake. The purpose of the sampling was to determine whether volatile organic compounds (VOCs) were detected in the wells of homes located in the subdivision. The stipulation required Nor-Lake to test private wells for a period of six years, provide bottled water or whole-house filters to affected residents, maintain filters and the remediation system addressing contamination at the manufacturing facility, and implement enhancements to that remediation system. The results of initial and subsequent samplings were to be reviewed by the DNR and, after consultation with Nor-Lake, were to form the basis for identifying an "area of concern" where the latter would conduct future sampling. The stipulation provided that Nor-Lake admitted no liability for the

contamination, and both parties agree that it spared Nor-Lake an exhaustive investigation into the contamination. The stipulation provided that the trial court retained “jurisdiction over this Stipulation for the purpose of enabling either party to apply for any further order that may be needed to construe, carry out, or enforce this Stipulation.”

A year after the judgment upon stipulation was entered, a dispute arose between Nor-Lake and the DNR over the extent the stipulation required testing of private wells. Nor-Lake filed a motion for interpretation of the stipulation and for an evidentiary hearing before the trial court, while the DNR responded with a motion to enforce the stipulation and judgment. In its memorandum decision, the court sua sponte vacated the judgment because “the Stipulation is not conclusive for purposes of ch. 227 judicial review.” It remanded to the DNR, stating “further proceedings consistent with ch. 227 are thus necessary to enable the Court to properly exercise its statutory powers of judicial review.”

The first issue we address is whether the court was without jurisdiction to interpret its own final judgment because the stipulation and order for judgment was entered to resolve a ch. 227, STATS., dispute. This involves a question of statutory construction that we review de novo. *Schauer v. DeNeveu Homeowner’s Ass’n*, 194 Wis.2d 62, 70, 533 N.W.2d 470, 473 (1995). Both parties agree that the trial court mistakenly believed its authority to interpret the stipulation was limited by ch. 227 and erred by refusing to interpret and enforce its own judgment.

We conclude that the court had jurisdiction to interpret the judgment and that its review was not limited by ch. 227, STATS. The parties did not request

the court to interpret or enforce the initial DNR order, nor did they ask the court to act in its judicial review capacity under ch. 227. Rather, they merely requested the court to interpret its own judgment, which incorporated the parties' stipulation. Thus, the court was not acting in its review capacity but instead had de novo authority to interpret and enforce the stipulation.

In the interest of judicial economy, we reach beyond the precise issue before us and turn to the question whether the stipulation is ambiguous. Paragraph 1A of the stipulation provides:

Following the Department's receipt of the results of the initial sampling event conducted by Nor-Lake under the approved sampling plan, the Department may require additional monitoring in areas which were not initially sampled but are adjacent to new VOC detections.

Nor-Lake contends that, viewed in its entirety, the stipulation unambiguously requires it to sample adjacent wells of only those homes where sampling indicates the presence of a contamination plume whose profile meets that of its other sampling and that has defined the boundaries of the plume for which the stipulation obligates it to investigate. The State contends that the agreement unambiguously obligates Nor-Lake to test wells adjacent to those where VOCs have been detected in order to establish the area of concern. The court concluded that it could not reach a determination of the parties' intention because of their subjective interpretations of the stipulation. It was therefore concluded that the stipulation was ambiguous. We disagree.

A stipulation is a contract made in the course of judicial proceedings. *Johnson v. Owen*, 191 Wis.2d 344, 349, 528 N.W.2d 511, 514 (Ct. App. 1995). The cornerstone of contract construction is to ascertain the true

intention of the parties. *State ex rel. Journal/Sentinel, Inc. v. Pleva*, 155 Wis.2d 704, 710-11, 456 N.W.2d 359, 361 (1990). The construction of an unambiguous contract is a question of law that we review de novo. *Schlosser v. Allis-Chalmers Corp.*, 86 Wis.2d 226, 244, 271 N.W.2d 879, 887 (1978). The court should look to the language of the contract itself in order to ascertain the parties' intentions. *Erickson v. Gundersen*, 183 Wis.2d 106, 117, 515 N.W.2d 293, 299 (Ct. App. 1994).

We conclude that the stipulation is unambiguous as a matter of law and, rather than remand for the trial court to reach the same conclusion, we hold that the terms of the stipulation require Nor-Lake to sample the private wells in question. Viewed in its entirety, the stipulation sets forth a procedure obligating Nor-Lake to sample and submit the analytical findings to the DNR so that it may, after consulting with Nor-Lake, establish an area of concern and determine whether any detected VOCs are attributable to Nor-Lake. Contrary to Nor-Lake's implicit assertion, nothing presented to this court demonstrates that the DNR has delineated a final area of concern. Rather, a plain reading of the stipulation requires Nor-Lake to respond to the DNR's directive and sample wells adjacent to those where VOCs have been detected.

*By the Court.*—Order reversed and cause remanded.

Not recommended for publication in the official reports.

